

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY CLINTON, SR.,
Plaintiff,

-v.-

3:06-CV-1428
(TJM)(DEP)

BROOME COUNTY DEPT. SOCIAL SERVICES,
THE STATE OF NEW YORK, REBECCA HERMAN,

Defendants.

APPEARANCES:

ANTHONY CLINTON, SR.
Plaintiff, *pro se*

Thomas J. McAvoy, Senior United States District Judge

DECISION and ORDER

Presently before the Court is a civil rights complaint and application to proceed *in forma pauperis* brought by Plaintiff Anthony Clinton, Sr. Dkt. Nos. 1, 2.

In his complaint, Plaintiff alleges that Defendant Herman, an alleged former case worker at the Broome County Department of Social Services, made “critical decisions” pertaining to his children that allowed them to be placed in an alleged unsafe environment. Dkt. No. 1 at 5. Plaintiff alleges that the Broome County Department of Social Services allowed Defendant Herman to make those decisions and seeks a mandate changing Broome County’s policy for dealing with innocent children. *Id.* at 5. For a complete statement of Plaintiff’s claims, reference is made to the complaint.

After reviewing the entire file herein, the Court finds that Plaintiff’s *in forma pauperis* application may be **granted**.

Plaintiff has listed New York State as a Defendant. It is clear, however, that Plaintiff’s claims against New York State seeking monetary damages are barred by the Eleventh Amendment

to the United States Constitution. *See U.S. Const., Amend. XI; Hans v. Louisiana*, 134 U.S. 1 (1890); *Farid v. Smith*, 850 F.2d 917, 920-21 (2d Cir. 1988); *Amankwaah v. Cayuga County*, 1992 WL 296459 at *2-3 (N.D.N.Y. Oct. 16, 1995) (McCurn, C.J.). Therefore, New York State is dismissed, with prejudice, as a Defendant.

WHEREFORE, it is hereby

ORDERED, that New York State be dismissed, with prejudice, as a Defendant in this action, and it is further

ORDERED, that the Plaintiff's *in forma pauperis* application is **GRANTED**.¹ The Clerk shall issue a summons and forward it, along with a copy of the complaint and a packet containing General Order 25, to the United States Marshal for service upon the Defendant, together with a copy of this Order. The Clerk shall forward a copy of the summons and complaint by mail to the Office of the Attorney of Broome County; and it is further

ORDERED, that a formal response to Plaintiff's complaint be filed by the Defendant or her counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on the Defendant, and it is further

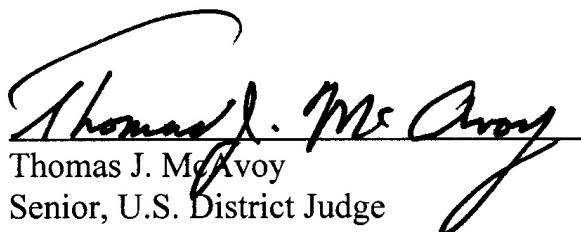
ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the court or the Clerk must be**

¹ The Plaintiff should note that although his application to proceed *in forma pauperis* has been granted, he will still be required to pay fees that he may incur in this action, including but not limited to copying and/or witness fees.

accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the court which does not include a proper certificate of service will be returned, without processing. Plaintiff must comply with requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in his address; failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the court; and it is further

ORDERED, that the Clerk serve a copy of this Order on Plaintiff.

Dated:December20,2006



Thomas J. McAvoy
Senior, U.S. District Judge